IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1533 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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THE ORIENTAL FIRE & GENERAL INSURANCE CO.LTD.

Versus

LALITA RAGHAVJI DADHANIA

Appearance:

1. First Appeal No. 1533 of 1984

MR RAJNI H MEHTA for Petitioner No. 1
MR NN PRAJAPATI for Respondent No. 1-4,5/1-5/2,6
MR SI NANAVATI for Respondent No. 5,6
NOTICE SERVED for Respondent No. 7-10
SERVED BY RPAD - (N) for Respondent No. 10
MR SV RAJU for Respondent No. 11
MR GAUTAM S PATEL for Respondent No. 12
NOTICE NOT RECD BACK for Respondent No. 12

CORAM : MR.JUSTICE M.H.KADRI
and

MR.JUSTICE K.A.PUJ

Date of decision: 09/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant-Oriental Fire & General Insurance Company Limited has, by filing this appeal under Section 110-D of the Motor Vehicles Act, 1939, challenged the legality and validity of the judgment and award dated July 31, 1984, passed by the Motor Accident Claims Tribunal (Aux.) Rajkot, in MAC Application No.441 of 1982. The Tribunal, by the impugned judgment and award, had awarded Rs.78,000, with interest at the rate of 6% per annum from the date of the application till realisation, to the respondents-claimants for the death of Raghavji Madhaji, who died in a vehicular accident due to the rash and negligent driving by the driver of motor truck bearing Registration No. GTW 3531.

2. The deceased Raghavji Madhaji was traveling as a fare paying passenger in motor truck No. GTW 3531 on August 6, 1983. The said truck was loaded with cement bags. When the said truck was proceeding near village Virpur, it had collided with motor truck bearing registration No. GTH 7563. Due to the collision, the deceased Raghavji Madhaji, along with other fare paying passengers, was pressed under the cement bags and he succumbed to death. The legal heirs and representative/dependants of the deceased Raghavji Madhaji filed MAC Application No.441 of 1982 in the Motor Accident Claims Tribunal, Rajkot, claiming compensation of Rs.1,50,000/- from the drivers, the owners of both the motor trucks, and the respective Insurance Companies.

3. The driver and the owner of the motor truck No. GTW 3531, though served with the summons of the claim petition, did not appear and file written statement. The Insurance Company, with which the motor truck No.GTW 3531 was insured, filed written statement at Exh.15, inter alia, contending that the said truck was used for carrying unauthorised persons which was not permitted by the insurance policy and the permit. It was, further, contended that the user of the vehicle was in disregard to the terms and conditions of the permit and, therefore, the Insurance Company was not liable to indemnify the insured, i.e. the owner of the truck. The driver, the owner and the Insurance Company of the motor truck No. GTH 7563 filed their joint written statement at Exh.21, inter alia, contending that the driver of the motor truck No. GTH 7563 was not responsible for causing the

accident and his negligence had not contributed in causing the accident. It was, further, contended that the driver of the motor truck No. GTH 7563 was driving his truck with a moderate speed, and the accident had taken place due to sole negligence on the part of the driver of the motor truck No. GTW 3531. They, therefore, prayed that the claim application against them be dismissed with costs.

4. On the basis of the abovereferred pleadings of the parties, the Tribunal framed issues. On appreciation of oral as well as documentary evidence on record, the Tribunal held that the driver of motor truck No. GTW 3531 was solely responsible for causing the accident. However, The Tribunal held the Insurance Company liable to pay the amount of compensation of Rs.78,000 along with the driver and the owner of motor truck No. GTW 3531, which has given rise to filing of this appeal by the Insurance Company.

5. We have heard learned advocate Mr. S.P. Parikh for Mr. R.H. Mehta for the appellant and learned advocate Mr. N.N. Prajapati for the respondents-claimants. The learned advocates for the parties have taken us through the entire record and proceedings of the appeal.

6. The learned advocate for the appellant has submitted that it is an admitted fact that the deceased Raghavji Madhaji was travelling in the motor truck No. GRW 3531 as a fare paying passenger, which was prohibited by the policy as well as the permit issued by the RTO. The learned advocate for the appellant has relied upon the permit at Exh.87 and the policy of the motor truck No. GRW 3531 at Exh.89. In the truck, in breach of the terms and conditions of the policy and in clear violation of the permit, unauthorised fare paying passengers were carried which is prohibited. The Supreme Court, in the case of Smt. Mallawwa and others vs. Oriental Insurance Company Limited and others, reported in AIR 1999 Supreme Court 589, has laid down the principle that, if there is a breach of the condition of the permit, the Insurance Company cannot be held liable to pay compensation for the injuries or the death caused to a fare paying passenger who was travelling in a goods vehicle unauthorisedly.

7. The learned advocate, Mr. N.N. Prajapati, appearing for the respondents original claimants, has relied upon the decision of the Full Bench of this Court in the case of New India Assurance Company Limited vs Smt. Nathiben Chatrabhuj and others, reported in 23(1)

GLR 411. In our opinion, in view of the decision of the Supreme Court in the case of Smt. Mallawwa (supra), the judgment of the Full Bench of this Court in the case of Smt. Nathiben Chatrabhuj, will not be binding to this Court.

8. In view of the pronouncement of the Supreme Court in the case of Smt. Mallawwa (supra), the passenger, who by paying fare is carried in a goods vehicle, will not be covered under the policy issued under Section 95 of the Act, and, therefore, this appeal will have to be allowed by holding that the appellant-Insurance Company shall have to be exonerated from the payment of compensation awarded by the Tribunal.

9. As a result of foregoing discussion, this appeal is allowed. The judgment and award dated July 31, 1984, passed by the Motor Accident Claims Tribunal (Aux.) Rajkot, in MAC Application No.441 of 1982, qua the appellant- Oriental Fire & General Insurance Company Limited, is quashed and set aside, and the appellant is exonerated from the payment of compensation awarded by the Tribunal. However, the judgment and award dated July 31, 1984, passed by the Motor Accident Claims Tribunal (Aux.) Rajkot, in MAC Application No.441 of 1982, qua the driver and the owner of motor truck No. GTW 3531, awarding compensation to the claimants at Rs.78,000/with interest at the rate of 6% per annum and the proportionate costs, is hereby confirmed. The order of disbursement/investment passed by the Tribunal in favour of the original claimants is also hereby confirmed. If any amount is deposited by the appellant-Insurance Company and is lying in the Fixed Deposit, the same shall be refunded to the Insurance Company, as the appellant-Insurance Company is exonerated from the payment of compensation awarded by the Tribunal. The award be modified accordingly. There shall be no order as to costs.

April 9, 2002 (M.H. Kadri, J.)

(K.A. Puj, J.)
(swamy)